IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14008 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAKIR-HUSEN @ MOGAL IQBAL-HUSEN SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 14008 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MS HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Ahmedabad City, on 11th of September, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 11th of September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two criminal cases came to be registered against the petitioner, under the Bombay Prohibition Act, one before Gomatipur Police Station, on 08th of October, 2003, and second before Shaherkotada Police Station, on 9th of May, 2004. It was alleged in the first case that the petitioner was found in possession of 280 liters of prohibited country liquor while in second case, he was found in possession of 525 liters of prohibited country liquor. The detaining authority thoroughly examined the investigation papers in both the above cases registered against the petitioner and came to the conclusion that the petitioner was dealing in storing, selling and transporting the prohibited liquor. In view of the detaining authority, liquor is injurious to the public health and dangerous to the human life, the detaining authority came to the conclusion that the illegal activities of the petitioner was affecting the maintenance of public order and adversely affecting the public health. The detaining authority also reached to the subjective satisfaction that the activities of the petitioner are required to be prevented forthwith. The detaining authority, therefore, after considering other measures, which may be taken against the petitioner in general law, came to the conclusion that there was no other alternative except to pass the order of detention against the petitioner. The detaining authority therefore passed the order of detention against the petitioner, which under challenge in this petition.

3. Learned Advocate Ms. Banna Dutta for the petitioner and learned AGP Mr. H.M. Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record was also considered.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activity of the

petitioner the public order was disturbed and public health was adversely affected.

5. To arrive at the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. In this exercise, the detaining authority must daw a line between the cases falling under "breach of law and order" and "breach of public order". The fall out, reach and impact of the activities of the petitioner determines whether potentiality of the activities alleged was capable of disturbing the public order. When reach and impact of the activities are so grave, as to affect larger section of society and widespread danger to life, property, or the public health is likely, the activities can be branded as activity affecting the public order. The other cases are cases falling within the scope of breach of law and order, and can be taken care of by the general law. Referring to the two cases under the Prohibition Act filed against the petitioner, and going through the investigating papers, it appears that those cases came to be filed against the petitioner because he was found in possession of some prohibited foreign liquor in breach of the Prohibition Act. Those cases are pending and the petitioner shall be tried and may be punished as well, if found guilty, but it is clear that though the investigating papers, which is the basic material, on which the detaining authority has placed reliance and has formed opinion, do not disclose the impact of activities of the petitioner disturbing the larger section of the society. At the most, these cases may be considered to be breach of law, for which, as aforesaid, the petitioner will be dealt with according to law. Therefore, the act constituting criminal offences registered against the petitioner in dealing with prohibited foreign liquor, have no bearing at all on the question of maintenance of public order. In this view of the matter, the subjective satisfaction arrived at by the detaining authority based on the above material in respect of maintenance of public order is not legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed on this ground alone.

6. In the result, the petition is allowed. The

order passed by the Commissioner of Police, Ahmedabad City, on 11th of September, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Jakir-Husen @ Mogal Iqbal-Husen Shaikh is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair